

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-222295 **DATE:** April 4, 1986
MATTER OF: Vacco Industries

DIGEST:

GAO will not consider the merits of an untimely protest by invoking the significant issue exception to timeliness requirements where the untimely protest does not raise issues of first impression which would have widespread significance to the procurement community.

Vacco Industries (Vacco) protests the award of a contract to G.W. Dahl Company, Inc., under request for proposals (RFP) No. N00024-85-R-4096(Q), issued by the Naval Sea Systems Command for quiet air-reducing manifolds.

We dismiss the protest.

Vacco states that it filed a timely protest with the Navy and the Navy denied the protest on or about November 14, 1985. Vacco states that while its protest to this Office, filed March 11, 1985, may be untimely, its protest raises several significant issues and, therefore, we should consider the merits under our "significant issues" exception to the timeliness requirement. 4 C.F.R. § 21.2(c)(1985). Vacco contends that the solicitation stated requirements (unlimited data rights) beyond the government's needs and the solicitation failed to contain a clear statement of the evaluation factors to be used. Vacco cites several of our decisions for the proposition that we will consider the above issues even though the protest may be untimely filed.

Our Bid Protest Regulations require that where a protest has been filed initially with a contracting agency, any subsequent protest to GAO should be filed within 10 days of formal notification of or actual or constructive knowledge of initial adverse agency action. 4 C.F.R. § 21.2(a)(3). We have made exceptions to this rule under 4 C.F.R. § 21.2(c), where we determine that a protest raises issues significant to the procurement system. In the cases

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which Vacco cites, for example, we held that the failure to solicit for the government's actual needs was a significant issue which would cause us to consider an untimely protest. Aqualine Environmental Services, Incorporated, B-196168, Apr. 8, 1980, 80-1 C.P.D. ¶ 260. See also Southeastern Services, Inc., and Worldwide Services, Inc., B-187872, June 3, 1977, 77-1 C.P.D. ¶ 390. We have also entertained an apparently untimely protest where the solicitation failed to provide a clear statement of the evaluation factors to be used. Lanier Business Products Inc., 60 Comp. Gen. 306 (1981), 81-1 C.P.D. ¶ 188.

Since those decisions, however, we have further explained when we would entertain untimely protests under the significant issue exception. Under our more recent decisions, these protests do not fall within the significant issue exception.

The significant issue exception is used where the subject matter of the protest evidences a matter of wide-spread interest or importance to the procurement community and the matter has not been considered on the merits in previous decisions. Detroit Broach and Machine, B-213643, Jan 5, 1984, 84-1 C.P.D. ¶ 55. We have had numerous decisions in which we considered the allegation that specifications in a particular solicitation overstate the agency's minimum needs. See Julie Research Laboratories, Inc., B-219365; B-219368, Sept. 4, 1985, 85-2 C.P.D. ¶ 266, and cases cited therein. Moreover, as the protester has pointed out, we have dealt with the issue of an agency's failure to clearly state the evaluation factors to be used. Lanier Business Products Inc., 60 Comp. Gen., *supra*. Thus, while we recognize the importance of these matters to the protester, we do not find Vacco's untimely issues to be significant within the meaning of 4 C.F.R. § 21.2(c), as they do not present unique issues of first impression, nor do they involve questions whose resolution would benefit parties other than the protester. Tritan Corporation, B-218306, May 23, 1985, 85-1 C.P.D. ¶ 601.

We also point out that Vacco's earlier protest to the Navy against various provisions in the solicitation was untimely filed since it was filed after the closing date for receipt of proposals. 4 C.F.R. § 21.2(a)(1) (1985).

The protest is dismissed.

